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RECEIVED

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July 7, 2003

SARA KYLE, COMMISSIONER  
TN REGULATORY AUTHORITY

VIA U.S. MAIL

Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Dear Ms. Kyle:

Enclosed for the Tennessee Regulatory Authority's review is a copy of Advantage Cellular Systems, Inc.'s (Advantage) Reply Comments regarding its request that the Federal Communications Commission designate Advantage as an Eligible Telecommunications Carrier filed on July 7, 2003. Also enclosed is a pink copy of this letter. Please date-stamp the letter and return it to my attention in the self-addressed stamped envelope.

If you have any questions or concerns, please contact us.

Sincerely,

Rebecca Murphy

Enclosures

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Federal-State Joint Board on</b>	)	<b>CC Docket No. 96-45</b>
<b>Universal Service</b>	)	
	)	
<b>Advantage Cellular Systems, Inc.</b>	)	
	)	
<b>Application for Designation as an</b>	)	
<b>Eligible Telecommunications Carrier</b>	)	
<b>in the State of Tennessee</b>	)	

**To: Wireline Competition Bureau**

**REPLY COMMENTS OF ADVANTAGE CELLULAR SYSTEMS, INC.**

Advantage Cellular Systems, Inc. ("Advantage"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") rules and regulations and the FCC's Public Notice,<sup>1</sup> hereby files these reply comments regarding its request that the FCC designate Advantage as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> in response to oppositions filed by Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (together "Frontier") and Verizon.

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Tennessee*, Public Notice, CC Docket No. 96-45, DA 03-1894 (June 5, 2003).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. § 151, et seq.

In its petition, Advantage outlined how it provides all the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's Rules, throughout its commercial mobile radio service ("CMRS") service area in Tennessee.<sup>3</sup> Advantage also established how it satisfied each of the elements required for ETC designation by the FCC pursuant to Section 214(e)(6) set forth in the *FCC's Section 214(e)(6) Public Notice*.<sup>4</sup> Further, Advantage demonstrated how a grant of its petition would serve the public interest by allowing customers in rural Tennessee to choose telecommunications service based on pricing, service quality, customer service, service availability, mobility, and access to enhanced 911 ("E911"). As discussed below, neither the Frontier nor the Verizon opposition offers a compelling rationale for denial of Advantage's petition.

**I. Frontier Provides No Legal, Factual, or Policy Basis for Denial of ETC Status**

Frontier's comments in opposition to Advantage's request for ETC designation contain no legal, factual, or policy basis for denial. As an initial matter, Frontier does not contest that Advantage 1) provides the "core" services supported by the federal universal service support program pursuant to Section 54.101(a) of the Commission's Rules; 2) will offer supported services through its own facilities pursuant to Sections 54.400 – 415 of the Commission's Rules; and 3) will advertise its universal service offering in accordance with Section 54.201(d)(1) of the Commission's Rules.

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<sup>3</sup> 47 C.F.R. § 54.101(a).

<sup>4</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997) ("Section 214(e)(6) Public Notice"). Specifically, Advantage provided an "affirmative statement" from the Tennessee Regulatory Authority ("TRA") that the state of Tennessee lacks the jurisdiction to perform the ETC designation, thus giving the Commission authority over the instant matter pursuant to Section 214(e)(6) of the Act. See *in re Federal-State Joint Board on Universal Service, Farmers Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 03-754 (March 12, 2003) ("*Farmers MO&O*").

Frontier's opposition is based on a simplistic construction of Advantage's public interest argument that willfully ignores the copious public interest evidence that Advantage has provided on the record. Frontier argues that designating the applicant as an additional ETC in a rural telephone company study area does not create competition and is not in the public interest.<sup>5</sup> As demonstrated below, Frontier's argument has been refuted by the FCC and the courts which have determined that competition in rural areas, in and of itself, is in the public interest.

The Commission has found that designating wireless carriers as ETCs in rural areas serves the public interest, stating "[a]n important goal of the 1996 Act is to open local telecommunications markets to competition."<sup>6</sup> In its *First Report and Order on Universal Service*, the Commission chastised carriers who contend, as Frontier does in its opposition, that in certain rural areas, competition may not always serve the public interest.<sup>7</sup> The Commission determined that "these commenters present a false choice between competition and universal service."<sup>8</sup> Indeed, the U.S. Court of Appeals for the Fifth Circuit stated that:

*Alongside the universal service mandate is the directive that local telephone markets be opened to competition. The FCC must see to it that both universal service and local competition are realized; one cannot be sacrificed in favor of the other.*<sup>9</sup>

In other words, the FCC and the courts assume that competition, *per se*, is in the public interest. Frontier has provided no legal reason to overcome this assumption.

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<sup>5</sup> Frontier Comments at 2.

<sup>6</sup> *In re Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order at ¶ 23, CC Docket 96-45 (rel. Nov. 27, 2002).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *First Report and Order*, 12 FCC Rcd 8776 at ¶ 50 (1997) ("*First Report and Order on Universal Service*").

<sup>8</sup> *Id.*

<sup>9</sup> *Alenco Communications Inc. v. FCC*, 201 F.3d 608, 615 (5th Cir. 2000).

Bolstering the FCC and the court's preference for competition, Advantage also provides numerous facts (ignored by Frontier) concerning the public interest benefits of its competitive universal service offering. Advantage notes that it will use federal universal service support to 1) provide more mobile service in rural Tennessee through the construction of more cellular towers; 2) upgrade its network to deliver third-generation digital service choices to customers; 3) provide location-capable E911 services to Tennessee consumers; and 4) deliver expanded local calling scopes, more calling plan choices, and lower rates to consumers in Tennessee.<sup>10</sup> The increased choice, improved public safety, higher quality service, and lower prices are specific benefits of a competitive universal service offering that will be realized in the portion of Frontier's service area that is served by Advantage. In addition, as Frontier concedes, as a result of competition from a neighboring competitive local exchange carrier ("CLEC"), "Frontier has reduced prices and modified its service offerings."<sup>11</sup> As a competitive ETC, Advantage expects to provide more pressure on Frontier to use its federal universal service support to lower prices and offer new services.

Frontier presents the curious argument that Advantage's public interest argument is flawed because "Advantage does not compete with Frontier."<sup>12</sup> Frontier appears to suggest that because it has chosen not to initiate a "competitive response" to Advantage and other CMRS competitors, and based on its unsupported conclusion that "customers are not canceling their Frontier service in favor of Advantage's service,"<sup>13</sup> that Advantage is not competing with Frontier. Frontier cannot close its eyes to competition and wish it away. Frontier's "no competition" assertion is belied by the mere fact that Advantage is providing service in

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<sup>10</sup> See Advantage Petition at 21-24.

<sup>11</sup> Frontier Petition at 4.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 5.

Frontier's territory that is used by Frontier customers.<sup>14</sup> Simply put, Advantage offers telecommunications service, attracts customers, and books revenue in McMinnville and Sparta Tennessee – in direct competition with Frontier. Even if Frontier was correct in its belief, Section 214(e)(6) does not require the Commission to determine whether a wireless carrier is successfully competing with a rural telephone company when designating an additional ETC. Section 214(e)(6) only requires the Commission to decide whether designating an additional ETC is in the public interest. Based on the record, undisputed by Frontier, Advantage will deliver numerous public interest benefits to rural Tennesseans.<sup>15</sup>

## **II. Advantage's Decision to Serve Only Its CMRS Service Area Is Rational and in the Public Interest**

Frontier takes exception to Advantage's technically rational plan to provide competitive ETC service only where it is licensed to provide CMRS service, suggesting that Advantage should provide service throughout the entirety of Frontier's service area using its own facilities or by using unbundled network elements ("UNEs") or resale.<sup>16</sup> With all due respect to Frontier's proposed hybrid CMRS/CLEC business plan, Advantage, as a CMRS carrier, is seeking to provide a mobile alternative to traditional wireline service in a technologically neutral fashion as endorsed by the FCC.<sup>17</sup> Further, as a CMRS carrier, Advantage is lawfully prohibited from providing CMRS service outside of its license area. Advantage's choice to offer, advertise, and

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<sup>14</sup> *Id.* at 3 and 4.

<sup>15</sup> See Advantage Petition at 21-24.

<sup>16</sup> Frontier Comments at 9.

<sup>17</sup> The FCC, in its *First Report and Order on Universal Service*, established the universal service principle of "competitive neutrality" which states:

*Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.* *First Report and Order on Universal Service* at ¶ 47.

provide universal service within its service area is therefore not only a rational business and technical choice, it is its only legal choice.<sup>18</sup>

Contrary to Frontier's unsupported interpretation,<sup>19</sup> the Federal-State Joint Board on Universal Service ("Joint Board") did not recommend, pursuant to its authority established in Section 214(e)(5) of the Act,<sup>20</sup> that the Commission and the states *never* permit a competitive ETC to serve less than a rural telephone company's study area. Instead, the Joint Board expressed several concerns which it stated could be overcome by a carrier's public interest showing.<sup>21</sup> Advantage's petition addresses each one of the Joint Board's concerns, as reiterated below.

One of the Joint Board's concerns was that a CMRS ETC could engage in "cream-skimming." However, the Commission no longer considers the cream-skimming argument a convincing opposition to a CMRS carrier seeking ETC designation. As the Commission concluded, "any concern regarding 'cream-skimming' of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated."<sup>22</sup> If indeed Advantage wanted to cream-skim, it would not hold itself out to provide service *throughout* its entire CMRS license area and would instead pick and

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<sup>18</sup> Assuming *arguendo* that Advantage desired to pursue Frontier's impractical, expensive, and regulatory complex suggestion to become a CMRS/wireline hybrid and request the use of UNEs and resale from Frontier, Advantage notes that Frontier, as a "rural telephone company" under the Act, can easily refuse this Section 251(c) request pursuant to its "rural exemption" codified in Section 251(f)(1) of the Act. See 47 U.S.C. §§ 153(37) and 251(f)(1).

<sup>19</sup> Frontier Comments at 7.

<sup>20</sup> 47 U.S.C. § 214(e)(5).

<sup>21</sup> *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, 155 (1996) ("Recommended Decision").

<sup>22</sup> *In re Federal-State Joint Board on Universal Service Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier In the State of Wyoming*, 24 CR 1216, CC Docket 96-45, Order on Reconsideration, FCC 01-311 (October 19, 2001).

choose where it is seeking ETC status. Given that Advantage has committed to providing its universal service offering throughout its entire CMRS license area, even if Advantage wanted to engage in cream-skimming, it could not. Pursuant to the FCC's Rules, Advantage must advertise and offer the "core" services supported by federal universal service throughout the area in which it is seeking ETC status.<sup>23</sup> Accordingly, Advantage cannot lawfully engage in cream-skimming.<sup>24</sup>

The Joint Board also urged the Commission to consider a rural carrier's special status under the Act when deciding to designate ETCs in rural areas.<sup>25</sup> The Commission's careful consideration of the public interest served by Advantage's competitive ETC entry into a portion of a rural telephone company's study area, as required by statute, more than addresses the Joint Board's concern about the special status of rural telephone companies. Section 214(e) contains ample protections regarding the special status of rural telephone companies that the Commission must consider. As Advantage made clear in its petition, the "special status" of rural telephone companies is codified in Section 214(e) of the Act which requires the Commission to find that the designation is in the public interest when designating an ETC in a rural telephone company area.<sup>26</sup> However, Frontier asserts that the Commission should take into account more than the public interest when considering the special status of rural telephone companies pursuant to Section 214(e)(5). Frontier attempts to bootstrap, with no legal support, the distinct requirements of Section 251(f)(1) of the Act concerning the rural "exemption" from certain interconnection

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<sup>23</sup> See 47 C.F.R. § 54.201(d)(1).

<sup>24</sup> As a rural telephone company, Frontier has the ability to alleviate its concerns about possible cream-skimming by disaggregating its universal service support below the study area level. See *Fourteenth Report and Order*, 16 FCC Rcd 11294, 11302 (2001). The fact that Frontier's disaggregation plan is still pending before the TRA should not affect this instant proceeding since Advantage will abide by any such plan once it is approved by the TRA.

<sup>25</sup> *Recommended Decision*, 12 FCC Rcd 87 at ¶¶ 172-174.

<sup>26</sup> 47 U.S.C. § 214(e).



obligations into the Section 214(e) ETC designation requirements.<sup>27</sup> Congress is quite specific about the special status of rural telephone companies throughout Section 214(e) – *e.g.*, requiring the Commission to pay special attention to rural telephone company study areas in Section 214(e)(5) and to weigh the public interest of ETC designations in rural study areas in Section 214(e)(6). Had Congress wanted to incorporate the rural protections contained in Section 251 into Section 214(e), it would have done so.<sup>28</sup>

Frontier's baseless concern that universal service will be harmed by a "resulting loss in revenues and unrecovered costs [that] would force up rates in rural areas"<sup>29</sup> is misplaced. If, as Frontier states, "customers are not canceling their Frontier service in favor of Advantage's service,"<sup>30</sup> Frontier will experience no loss in high cost universal service support.

### **III. Verizon's Opposition Is More Properly the Subject of Separate Proceedings**

Verizon's opposition,<sup>31</sup> voicing its concern over consequences to the CALLS Order and a plea for all ETC applications to be stayed pending numerous outstanding universal service issues, is non-germane to the instant proceeding and is more properly the subject of separate proceedings. Verizon may address its concerns either through ongoing proceedings and/or by petitioning for a declaratory ruling or a rulemaking pursuant to Sections 1.2 and 1.401 of the Commission's Rules, respectively.

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<sup>27</sup> See Frontier Comments at 8 and 9.

<sup>28</sup> The remaining Joint Board concern concerning the burden a rural carrier might face when disaggregating its costs does not apply in this case since the Commission has determined that rural telephone companies are able to calculate their costs below a study area level. In fact, Frontier has already submitted a disaggregation plan to the TRA.

<sup>29</sup> Frontier Comments at 10.

<sup>30</sup> *Id.*

<sup>31</sup> Verizon captions its pleading as an "Opposition," however, it does not oppose the grant of Advantage's ETC petition. Rather, all Verizon seeks is a stay of action on the petition, pending resolution of unrelated issues in a separate proceeding.

Even if the Commission chooses to address Verizon's access charge-based concerns in this proceeding, Verizon offers no reasonable argument why Advantage's specific ETC request should be delayed or denied. As an initial matter, Verizon is almost wholly unaffected by Advantage's competitive ETC entry in Tennessee. Verizon is not an incumbent local exchange carrier in Tennessee. Thus, Verizon's speculative concerns about universal service, or more specifically, interstate access support, should be given little, if any, weight in this proceeding. As discussed below, Verizon's concerns are also exaggerated.

Verizon overstates the impact of non-rural ETC designations on the capped \$650 million interstate access support fund. Based on first quarter 2003 Universal Service Administrative Company ("USAC") figures, total Interstate Access Support (CALLS based) has been diluted by only \$6.1 million by non-rural ETC designations. This is less than 1 percent of the total capped \$650 million fund. This is hardly alarming or a threat to Verizon's ability to set its subscriber line charge ("SLC") rates as it wishes. Advantage disagrees with Verizon that its share of a \$6.1 million *nationwide* dilution of CALLS-based interstate access support will cause any financial hardship or prompt a massive re-balancing of SLC rates based upon UNE zone rates.<sup>32</sup> Further, Verizon's call for the Commission to stay all pending ETC applications is anti-competitive on its face, and in light of the less than 1 percent dilution of interstate access support, entirely premature. Advantage urges the Commission to examine Verizon's long-term concerns in a separate proceeding.

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<sup>32</sup> In Tennessee, BellSouth's total annual interstate access support is \$4.8 million per year or 15 cents per customer per month ( $\$4,800,000 / 2,700,000 \text{ lines} / 12 \text{ months} = 15 \text{ cents}$ ). Accordingly, Advantage, as a small, rural carrier, seriously doubts that any such support that it garners from the capped interstate access support fund is going to cause BellSouth in Tennessee to reinstitute the primary interexchange carrier charge ("PICC") or raise its SLC.

#### **IV. Conclusion**

Advantage has demonstrated that it meets the legal, factual, and policy requirements necessary to be designated as an ETC pursuant to Sections 214(e) and 254 of the Act. As discussed above, both Frontier and Verizon offer no compelling arguments why the Commission should not grant Advantage's petition and further the promotion and advancement of universal service in rural Tennessee.

Respectfully submitted,

**ADVANTAGE CELLULAR SYSTEMS, INC.**

By: \_\_\_\_\_/s/\_\_\_\_\_

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